



**Framework for  
managing performer  
concerns**

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**Document Status**

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# **Framework for managing performer concerns**

## **Managing concerns in line with NHS (Performers Lists) (England) Regulations 2013**

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Prepared by: NHS England Responding to Concerns Policy Development Group/Primary Care Commissioning (PCC)

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# 1 Introduction

From 1 April 2013, the NHS Commissioning Board adopted the name NHS England, a name that gives people a greater sense of our role, scope and ambitions as the organisation responsible for allocating the NHS budget, working to improve outcomes for people in England and ensuring high quality care for all, now and for future generations.

Our legal name remains the NHS Commissioning Board as set out in our establishment orders. Whilst the NHS Commissioning Board will be known as NHS England in everything that we do, there are times when the statutory name is required for legal and contractual transactions. The following list provides some key examples of legal documentation which requires us to use our full legal name:

- Human resources (HR) contract of employment;
- Any documentation involving a court of law, eg litigation claims; and
- Contracts for directly commissioned services.

For ease of reference NHS England is the generic term used throughout this framework.

NHS England is responsible for planning, securing and monitoring services commissioned by them in respect of primary care, offender health, military health and specialised services.

It is also responsible for holding clinical commissioning groups (CCGs) to account for the services they plan, secure and monitor on behalf of local populations. NHS England will ensure services commissioned by them and others improve patient outcomes and meet the requirements of the Commissioning Framework.

This document is underpinned by the values of NHS England:

- A clear sense of purpose
- A commitment to putting patients, clinicians and carers at the heart of decision-making
- An energised and proactive organisation, offering leadership and direction
- A focused and professional organisation, easy to do business with;
- An objective culture, using evidence to inform the full range of its activities
- A flexible organisation
- An organisation committed to working in partnership to achieve its goals

- An open and transparent approach
- An organisation with clear accountability arrangement.

This NHS England Framework for managing performer concerns: NHS (Performers Lists) (England) Regulations 2013, hereafter referred to as 'this framework', seeks to embody these values, as well as ensure that the handling of concerns is undertaken in a way that protects patients and drives up the quality of healthcare. It also ensures NHS England's responsible officers discharge their statutory obligations.

NHS England's central role is to ensure that the NHS delivers better outcomes for patients within its available resources. The performers lists system supports NHS England in the delivery of this central role to ensure:

- consistency of primary care service delivery;
- services are safe and effective; and
- continuous improvement of quality is sought.

The legislative framework in England is set out in the National Health Service (Performers Lists) (England) Regulations 2013. The regulations provide a framework for managing, medical, dental and ophthalmic performers undertaking clinical services.

The 2013 regulations replace the National Health Service (Performers Lists) (England) Regulations 2004.

The National Health Service (Performers Lists) (England) Regulations 2013 entrusts the responsibility for managing the performers lists (medical, dental and ophthalmic) to NHS England as the commissioner of primary care services. The performers lists replace the previous system of individual PCT performers lists.

Each of the performers groups is also separately governed by their respective professional regulator. Action taken by the regulator may have implications for the status of the performer on the performers list/s. Similarly services provided by medical and dental performers are subject to regulation by the Care Quality Commission (CQC). NHS England has an important role in acting on the information shared by these bodies.

The framework is also informed by the Medical Profession (Responsible Officer) Regulations 2010 and subsequent amendments.

## 2 Policy statement

The scope of this framework reflects NHS England's powers as set out in the National Health Service (Performers Lists) (England) Regulations 2013. It also reflects NHS England's transfer of responsibility for the management of a concern between area teams related to the movement of a performer.

The term primary care performer is used throughout this document to mean the medical, dental or ophthalmic performers included on the performers lists for the provision of primary care services. This includes military health and offender health services.

The powers enable NHS England to ensure that performers are fit for purpose. This means they are suitable to undertake NHS primary care services and to protect patients from any performers who are not suitable, or whose ability to perform those services may be impaired.

This framework encompasses:

- the process for considering applications and decision making for inclusion, inclusion with conditions and refusals to be made by the area team;
- the process by which area teams identify, manage and support primary care performers where concerns arise; and
- the application of NHS England's powers to manage suspension, imposition of conditions and removal from the performers lists.

## 3 Scope

Officers of the following NHS England areas are within the scope of this document:

- NHS England:
  - national teams;
  - regional teams; and
  - area teams.

For those medical staff who are directly employed by NHS England and who are not on the performers lists, the policy for responding to concerns in doctors with a prescribed connection to NHS England through employment is the applicable policy, not this framework.

This framework, and the processes it describes, should not be used as part of the process to consider pharmacy applications as pharmacy contractors are not included on performers lists. A medical contractor with an NHS contract cannot be a decision maker in pharmacy applications. However, if a concern arises about an existing pharmacy contractor this will be handled within the decision making and support

structure of the performance advisory groups (PAG) and performers list decision panels (PLDP) set out below.

## **4 Roles and responsibilities**

### **4.1 Roles and responsibilities of the decision making and support structures**

NHS England has established performers lists decision panels (PLDPs) and performance advisory groups (PAGs) within area teams in order to support its responsibility in managing performance of primary care performers. The PAG's role is investigative and advisory; the role of the PLDP is to make decisions under the performers lists regulations.

The PAG considers all complaints or concerns that are reported about a named clinician and can determine that an initial investigation is to be carried out. If action is considered to be necessary under the performers lists regulations, the case is referred to a PLDP. In cases where there is a conflict of interest or a perception of bias, an alternative PLDP shall be convened to consider the case.

The PAG terms of reference are set out in Annex 2. The PLDP terms of reference are set out in Annex 3.

The process for inclusion onto England's performers lists is set out in NHS England's standard operating procedures.

The area team's responsible officer/medical director or nominated deputy will assess each application against the inclusion criteria. Where assessment reveals no information of note, applications for inclusion onto England's performers lists will be approved and authorised by the responsible officer/medical director or nominated deputy. Where assessment of the application reveals information of note or identifies concerns, the responsible officer/medical director or nominated deputy should refer the matter for consideration by the PLDP.

Clinical governance arrangements have been established to identify issues relating to fitness for purpose and or practice. Where a concern arises as a result of these arrangements, the responsible officer/medical director or nominated deputy should refer the matter for initial consideration by the PAG.

Any issues related to the delivery of the contract are considered under the contract.

### **4.2 Roles and responsibilities of management and staff**

The area team responsible officer/medical director will have overarching responsibility for the operation of this framework taking any steps necessary to

protect patients. This will ensure that procedures are established to assess and investigate concerns, appropriate action is taken to address variation in individual performance and to ensure any necessary further monitoring of the performer is in place, liaising with regulators and external bodies as appropriate.

Area teams will require access to case investigators and case managers who meet the published national competency requirements. NHS England will ensure that there is a sufficient support of this nature and other identified managerial and administrative support to allow for an effective process for responding to concerns.

All members of staff involved in the process of responding to concerns must have time to perform their responsibilities efficiently and effectively to a high quality standard.

The process will require the capacity and skills for collecting and collating data relating to the concerns, production of periodic audits and reports and effective information governance.

Area teams will establish the PAG and PLDP membership in accordance with the terms of reference (annexes 2 and 3). Members of the PAG and PLDP must be able to demonstrate that they have the necessary skills, knowledge and experience to sit on the panel, as described in the PAG and PLDP terms of reference, and the job descriptions of panel members.

The role of the panel is to:

- hear the evidence;
- make decisions about the case; and
- give reasons for decisions.

A flowchart illustrating the process for managing issues of concern can be found in Annex 4. Staff should also comply with NHS England's corporate risk management policy.

## **5 Corporate level procedures**

### **5.1 Governing principles**

All those within NHS England who are involved with the assessment of applications for inclusion onto England's performers lists and/or involved with the handling of concerns about performance of performers included on England's performers lists will ensure that their working arrangements comply with the following governing principles:

- protecting patients and public;

- enhancing public confidence in the NHS;
- identifying the possible causes of underperformance;
- ensuring equality and fairness of treatment and avoiding discrimination;
- being supportive of all those involved;
- confidentiality;
- ensuring that action is appropriate and proportionate;
- being fair, open and transparent; and
- decisions may be subject to appeal.

In particular, it is important that every case is dealt with according to individual circumstances. All decisions made by NHS England relating to the fitness for purpose and/or thresholds for referral for fitness to practice of a performer including any removal or suspension will be made in accordance with the relevant statutory regulations. Every effort is made to ensure that any decision taken by NHS England is procedurally robust. Any substantive action such as a decision to remove or terminate a performer is well founded and based on evidence that is credible, cogent, sufficient and reliable.

It is the duty of NHS England as an NHS body to put in place and maintain arrangements for the purpose of monitoring and improving the quality of healthcare provided by and on behalf of itself. It is the responsibility of the performer to notify NHS England of any change in their personal circumstance that may affect their status on the performers lists.

It is important that all parties have confidence in the process and accordingly NHS England will seek to raise awareness and understanding amongst all employed staff and others about this framework. All individuals involved in the delivery of this framework will have training, support and performance review relevant to their respective roles.

## **5.2 Ensuring equality and fairness of treatment and avoiding discrimination**

Equality and diversity are at the heart of the NHS strategy. Due regard to eliminate discrimination, harassment and victimisation, to advance equality of opportunity, and to foster good relations between people who share a relevant protected characteristic (as cited under the Equality Act 2010) and those who do not share it,

has been given throughout the development of the policies and processes cited in this document.

## **6 Procedure governing inclusion onto England's performers lists**

This framework must be read in conjunction with NHS England's standard operating procedures for medical, dental and ophthalmic performers for primary care support.

Area teams are responsible for ensuring that an application for inclusion onto England's performers lists shall be received, checked and processed by their directly employed staff or by their primary care support services.

The responsible officer/medical director, with appropriate clinical advice, will assess each application against the inclusion criteria taking into account the information and declarations provided by the performer along with any other information the area team has in its possession that it considers relevant.

Where assessment reveals information of note or a concern arises, the responsible officer/medical director should refer the matter for consideration by the PAG.

## **7 Movement of performers between area teams**

A mechanism is in place to ensure a safe and effective process for the transfer of a performer from one area team to another. This process takes account of this framework for managing concerns and seeks to act in a manner that is transparent, fair and reasonable at all times.

Where a performer is under investigation, the process should normally be completed to the point where a decision can be made before the transfer comes into effect.

The transfer of responsibility for performers and their information is particularly important when a performer has a current remedial action plan including any conditions or voluntary undertakings.

Where a concern arises after the performer has transferred to a new area team the responsible officer/medical director of the receiving area team may delegate authority to the former area team to investigate. The outcome of the investigation must be provided to the receiving area team to allow a decision to be made.

## **8 Identifying and addressing concerns**

NHS England has an overriding obligation to take account of all information provided to it. Where this information gives rise to concerns relating to an individual

performer's conduct, performance or health the area team will take appropriate action to safeguard patients and the performer involved.

In this event the area team will assess against the NHS England risk matrix and, taking into account all other available clinical governance information, identify the nature of the concern and take a decision on immediate next steps.

The responsible officer/medical director is responsible for ensuring that the following key actions are taken:

1. Clarify what has happened and the nature of the problem or concern.
2. Seek appropriate advice from the regulator and external advisers, for example in the case of medical and dental performers, the National Clinical Assessment Service (NCAS).
3. Consider if any immediate steps to protect patient safety such as restriction of practice or suspension are required, including considering if a request should be made to NCAS to issue a HPAN notice.
4. If appropriate, ensure the performer is informed about the complaint or concern.
5. Consider if the case can be progressed by mutual agreement with the performer.
6. If a formal approach is required, appoint a case investigator and agree terms of reference.
7. Convene a PAG/PLDP to consider the case and decide on next steps.
8. Ensure accurate actions and decisions are recorded contemporaneously in the performer's file.

Where the regulator notifies NHS England of any actions or conditions the PLDP will consider the implications in relation to the performer's fitness for purpose and consider if further action is required.

In line with the performers lists regulations 12 (6) where NHS England considers it necessary to do so for the protection of patients or members of the public or is otherwise in the public interest, it may determine that a suspension is to have immediate effect. NHS England has nominated responsible officers/ medical directors with the power to order an immediate suspension following discussion with one other director. This decision must be reviewed by two members of the PLDP who have not been previously involved in the decision to suspend, within two working days beginning on the day the decision was made. The case must then be considered by the PLDP in accordance with the regulations.

All cases will be managed in line with the terms of reference of the PAG and PLDP (Annexes 2 and 3).

## 9 Distribution and implementation

This document will be made available via the NHS England website.

Notification of this document will be included in the all appropriate staff email bulletins and via external communications to primary care audiences.

A training needs analysis will be undertaken with staff affected by this document. Based on the findings of that analysis appropriate training will be provided to staff as required.

Guidance will be provided on the medical and operational directorates' intranet sites.

## 10 Monitoring

Compliance with this policy will be monitored via the primary care oversight group, together with independent reviews by internal and external audit on a periodic basis.

The primary care policy ratification group a formal sub-group of the primary care oversight group will have responsibility for reviewing and updating the policy. The document should be reviewed in 24 months unless guidance or legislation requires an earlier review.

## 11 Equality impact assessment

This document forms part of NHS England's commitment to create a positive culture of respect for all staff and service users. The intention is to identify, remove or minimize discriminatory practice in relation to the protected characteristics (race, disability, gender, sexual orientation, age, religious or other belief, marriage and civil partnership, gender reassignment and pregnancy and maternity) as well as to promote positive practice and value the diversity of individuals and communities.

An equality impact assessment will be carried out on the final draft of this framework, prior to publication.

## 12 Associated documents

Application form for inclusion in the performers lists, NPL1  
[www.performer.england.nhs.uk/Documents](http://www.performer.england.nhs.uk/Documents)

Change of status form, NPL2  
[www.performer.england.nhs.uk/Documents](http://www.performer.england.nhs.uk/Documents)

Movement between area teams form, NPL3  
[www.performer.england.nhs.uk/Documents](http://www.performer.england.nhs.uk/Documents)

Policy and standard operating procedures for primary care support (medical, dental and ophthalmic)  
<http://www.england.nhs.uk/ourwork/commissioning/primary-care-comm/>

Prescribed connections to NHS England guidance:  
<http://www.england.nhs.uk/revalidation/ro/resp-con/>

Responding to concerns in doctors employed by and with prescribed connections to NHS England policy  
<http://www.england.nhs.uk/revalidation/ro/resp-con/>

NHS whistle blowing policy

NHS England complaints policy  
[www.england.nhs.uk/contact-us/complaint](http://www.england.nhs.uk/contact-us/complaint)

NHS England information governance policy  
<http://www.england.nhs.uk/about/policies/>

NHS England assurance management frameworks for primary care contractors  
<http://www.england.nhs.uk/medical/>

NHS England remediation policy  
<http://www.england.nhs.uk/revalidation/ro/resp-con/>

## 13 References

The National Health Service Act 2006 as amended by the Health and Social Care Act 2012: <http://bit.ly/1f6iZmf>

The National Health Service (Performers Lists) Regulations 2004:  
<http://bit.ly/1cQX908>

The National Health Service (Performers Lists) Amendment Regulations 2005:  
<http://bit.ly/1faASpm>

The National Health Service (Performers Lists) Amendment and Transitional Provisions Regulations 2008: <http://bit.ly/M6C374>

The National Health Service (Performers Lists) Direction 2010

The National Health Service (Performers Lists) (England) Regulations 2013:  
<http://bit.ly/1j4MvYF>

The National Health Service (General Medical Services Contracts) Regulations 2004: <http://bit.ly/1hpPo91>

The National Health Service (Personal Medical Services Agreements) Regulations 2004: <http://bit.ly/1qvSMwl>

The National Health Service (Primary Medical Services) (Miscellaneous Amendments) Regulations 2004: <http://bit.ly/1gVMaFG>

The National Health Service (Primary Medical Services) (Miscellaneous Amendments) Regulations 2005: <http://bit.ly/1m1glyu>

The National Health Service (Primary Medical Services) (Miscellaneous Amendments) (No 2) Regulations 2005: <http://bit.ly/1eJkAA>

The National Health Service (Primary Medical Services and Pharmaceutical Services) (Miscellaneous Amendments) Regulations 2006

The National Health Service (Primary Medical Services) (Miscellaneous Amendments) Regulations 2007: <http://bit.ly/1f6jo8b>

The National Health Service (General Dental Services Contracts) Regulations 2005: <http://bit.ly/1qvTeul>

The National Health Service (Personal Dental Services Agreements) Regulations 2005: <http://bit.ly/NZnQul>

The General Ophthalmic Services Contracts Regulations 2008: <http://bit.ly/1bejx8G>

The Medical Profession (Responsible Officer) Regulations 2010: <http://bit.ly/MsGPMP>

NCAS [www.ncas.nhs.uk](http://www.ncas.nhs.uk)

Disclosure and barring service: <http://bit.ly/1hpPRrU>

Statement of financial entitlement

Secretary of State's determination for suspension payments

## **Annex 1**

Abbreviations and acronyms

## **Annex 2**

Terms of reference for the performance advisory group (PAG)

## **Annex 3**

Terms of reference for the performers lists decision panel (PLDP)

## **Annex 4**

Flow chart illustrating the process for managing issues of concern

## **Annex 5**

Elements of the framework specifically applicable to medical performers

## **Annex 6**

Elements of the framework specifically applicable to dental performers

## **Annex 7**

Elements of the framework specifically applicable to optometry performers

## Annex 1: Abbreviations and acronyms

AT	area team (of the NHS England)
Contractor	The term contractor means pharmacy contractors and dispensing appliance contractors (DACs) included in the pharmaceutical list as currently there are no equivalent lists for individual pharmacists or DAC performers.
CPD	Continuing professional development
CQC	Care Quality Commission
Days	calendar days unless working days is specifically stated
DBS	Disclosure and Barring Service
DDA	Disability Discrimination Act
EU	European Union
FHS	family health services
FPC	family practitioner committee
FTT	first-tier tribunal
GDP	general dental practitioner
GDC	General Dental Council
GDS	General Dental Services
GMC	General Medical Council
GMS	General Medical Services
GOC	General Optical Council
GOS	General Ophthalmic Services
GP	general practitioner
GPhC	General Pharmaceutical Council
HPAN	Healthcare professional alert notice
HR	human resources
IELTS	International English Language Testing System
LDC	local dental committee

LETB	local education and training board
LMC	local medical committee
LOC	local optical committee
LPC	local pharmaceutical committee
LPS	local pharmaceutical services
LRC	local representative committee
MDO	medical defence organisation
NCAS	National Clinical Assessment Service
NHS CB	NHS Commissioning Board
NHS CBA	NHS Commissioning Board Authority
NHS DS	NHS Dental Services
NHS LA	NHS Litigation Authority
OMP	ophthalmic medical practitioner
PAG	performance advisory group
PCC	Primary Care Commissioning
PDS	personal dental services
PLDP	performers' list decision panel
PMC	primary medical contract
PMS	Personal Medical Services
PSNC	Pharmaceutical Services Negotiating Committee
RO	responsible officer
SI	statutory instrument
SOP	standard operating procedure

SUI	serious untoward incident
The 2005 Regulations	The NHS (Pharmaceutical Services) Regulations 2005, as amended
The 2012 Regulations	The NHS (Pharmaceutical Services) Regulations 2012, as amended
The 2013 Directions	The Pharmaceutical Services (Advanced and Enhanced Services) (England) Directions 2013
The 2013 Regulations	The NHS (Pharmaceutical Services and Local Pharmaceutical Services) Regulations 2013

## Annex 2: Performance Advisory Group (PAG) terms of reference

### Constitution and authority

NHS England has established a sub-group within each area team to be known as the performance advisory group (PAG). It has authority to undertake any activity within these terms of reference.

### Membership and quoracy

The PAG will be a repository of expertise provided by individuals with in-depth knowledge of performance procedures and professional standards and able to provide advice on handling individual cases. Membership should comprise four voting individuals. These are:

1. A senior NHS manager with a performance role who will chair the PAG \*
2. A discipline-specific practitioner nominated by the medical director \*
3. A senior manager from the operations or nursing directorate who will bring expertise in patient safety and patient experience \*
4. A lay member.

\* The first three members must be present in order for the PAG to be quorate. All members have a vote and the chair has the casting vote, if necessary.

Additional non-voting individuals may be invited by the chair. This includes NHS England staff with contracting expertise and local representative committee members, if not attending in their own right.

Each member of PAG will be appointed to their role in line with a competency framework.

### Frequency

The PAG will meet as frequently as is required, as dictated by caseload.

### Purpose

- a. To provide advice, support, and take action where performance concerns have been raised.
- b. To ensure that all concerns of primary care performers or pharmacy contractors are managed in accordance with the NHS England framework for managing performer concerns.

- c. To ensure that performers in difficulty who do not present a threat to patient safety or public interest are signposted to the relevant agencies for support or can access occupational health to help prevent their performance from falling below the standard expected of the profession.

## Objectives

- a. To ensure that all concerns and all complaints related to a named clinician are received, considered, investigated where appropriate, and managed in the interest of patient safety and high standards of patient care.
- b. To ensure that primary care practitioners whose performance, conduct or health has given cause for concern are supported to return to a satisfactory standard where possible.
- c. To ensure a fair, open, consistent and non-discriminatory approach to the management of concerns.
- d. To facilitate the resolution of concerns through appropriate agreed local action and support for improvement.

## Duties

- a. To consider each individual case related to a named primary care performer or pharmacy contractor and decide whether further action or further information is required, or that there is no case to answer .
- b. To decide upon and agree, ideally through consensus but if not through the majority, a relevant course of action, the level of support required and the resources required.
- c. To ensure that details of the primary care performer or pharmacy contractor where a concern has been discussed, details of the actions and outcome, and details of the whistleblower, if applicable, are managed in accordance with the NHS England policies.
- d. To monitor progress in relation to the investigation of concerns and where appropriate of compliance and progress with remediation for cases and action plans which have been agreed outside of the NHS (England) (Performers Lists) Regulations 2013, and decide when the case can be closed, or whether further action is required.
- e. Where appropriate, to request a formal investigation.
- f. Where appropriate, to refer to occupational health.

- g. Where appropriate, to refer to external agencies for advice, for example National Clinical Assessment Service (NCAS), national professional and representative bodies, local representative committees, local education and training boards, or other advisory bodies.
- h. To request action by the PLDP or Pharmaceutical Services Reference Committee (PSRC) if necessary.
- i. Where delegated by the PLDP to review progress of performers who have conditions imposed, provide a report and recommendations to the PLDP for the PLDP to make a decision in accordance with NHS (England) (Performers Lists) Regulations 2013.

## Reporting

### The Chair of the PAG will:

- Carry out referrals to the PLDP.
- Report serious concerns related to a performer or contractor to the responsible officer/medical director
- Report half yearly to the central team for the purpose of auditing the attendance, running and quoracy of the PAG.

## Payment terms for the PAG membership

Reimbursement for the PAG membership is as follows:

- £50.00 per hour or part thereof for attendance at the PAG.
- Travel expenses at NHS England mileage rate or second-class train.
- Payment and travel expenses will only be paid to those the PAG members who are not otherwise employed by NHS England.
- Individuals attending the PAG who are not members are not eligible for payment.

## **Annex 3: Performers Lists Decision making Panel (PLDP) terms of reference**

### **Constitution and authority**

NHS England has established a sub-group within each area team to be known as the Performers Lists Decision making Panel (PLDP). The group is authorised by NHS England to undertake any activity within this terms of reference.

### **Membership and quoracy**

The PLDP will take overall responsibility for the management of performance, decide on actions required on individual performance cases in line with statutory regulations and make referrals to other bodies where appropriate. Membership of the PLDP comprises of the following individuals:

1. A lay member who will chair the PLDP.
2. A discipline-specific practitioner.
3. A senior NHS England manager/director with responsibility for patient safety/experience.
4. The medical director for an area team or their nominated deputy.

All four members need to be present for the PLDP to be quorate. All members have a vote and the chair has the casting vote, if necessary.

Additional non-voting members and advisors may also be invited by the chair from time to time. An LRC member may also attend at the performer's request.

Each member of the PLDP will be appointed to their role in line with a competency framework and relevant training will be provided.

In cases when immediate suspension is required a decision may be taken outside of the PLDP meetings by two of the core members. As soon as is practical, an appropriately convened oral hearing, in line with the NHS (Performers Lists) (England) Regulations 2013 or the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 as appropriate, will be held.

### **Frequency**

The PLDP will meet as frequently as is required, as dictated by caseload.

### **Purpose**

- a. To take overall responsibility for the management of applications to the performers lists and concerns of those on the performers lists.

- b. To consider and take appropriate action on all referrals of a serious nature in relation to concerns of primary care performers.
- c. To consider whether action may be required under the NHS (Performers Lists) (England) Regulations 2013.

## Objectives

- a. To agree relevant and appropriate action in the interest of patient safety or the safety of colleagues.
- b. To consider information presented to the PLDP in response to concerns of primary care performers from the PAG.
- c. To consider any response by a performer or pharmacy contractor in relation to concerns or complaint raised about them.
- d. To ensure that action is taken in line with NHS England policy and procedure, and in line with NHS regulations.
- e. To provide a formal route for the consideration of applications to join the NHS England performers lists when deferral, conditional inclusion or refusal of an application applies.

## Duties

To consider the information received, take any action that PAG may recommend and make one or more of the following decisions:

- a. Take no further action and refer back to the PAG for case closure.
- b. Refer back to PAG for further investigation or monitoring.
- c. Consider referral to the primary care contracts team for consideration under the relevant contract regulations.
- d. Refer to the relevant professional regulatory body.
- e. Refer to the police.
- f. Refer to NHS Protect.
- g. Agree an action plan for remediation of the primary care performer or pharmacy contractor when appropriate, including a reporting process for monitoring of the implementation of the action plan.

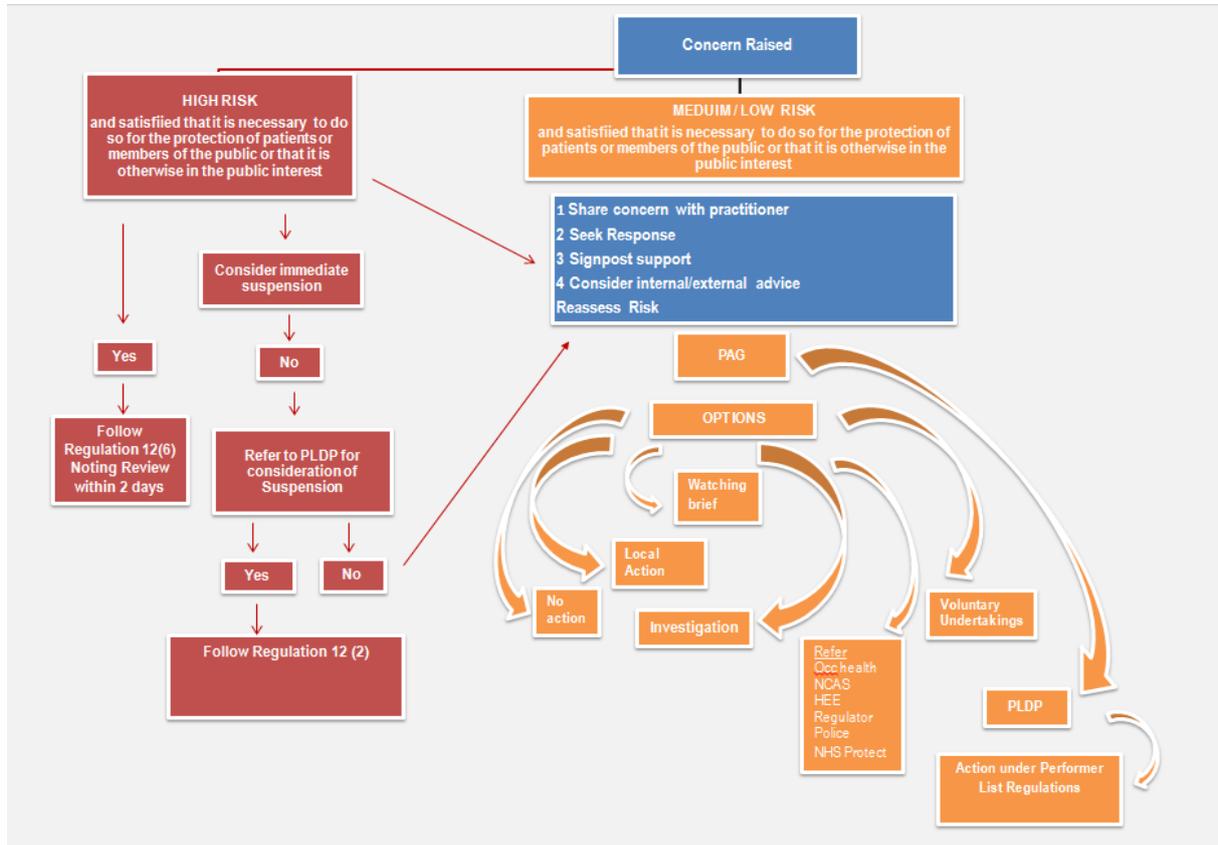
- h. Request the issue of an alert through the agreed NHS England mechanism according to the Healthcare Professionals Alert Notice Direction (2006).
- i. Take action by invoking the NHS (Performers Lists) (England) Regulations 2013.

## **Reimbursement for the PLDP membership**

Reimbursement for the PLDP membership is as follows:

- £50.00 per hour or part thereof for attendance at the PLDP.
- Travel expenses at NHS England mileage rate or second-class train.
- Payment and travel expenses will only be paid to those the PLDP members who are not otherwise employed by NHS England.
- Individuals attending the PLDP who are not members are not eligible for payment.

# Annex 4: Flow chart illustrating the process for managing issues of concern



## Annex 5

### Elements of the framework specifically applicable to medical performers

#### Terminology

For the purposes of consistency, the terminology used to describe those on the medical performers list will be providers and performers.

The NHS contracts with doctors, and some members of the NHS family, to provide primary care general medical services and they are known as providers.

Providers may employ or engage other doctors to deliver services to patients and these are known as performers. Some providers may also be performers and deliver services to patients.

Providers are ultimately responsible for all services delivered under the contract they hold with the NHS, whether they deliver the services themselves or they employ other professionals to deliver services under their contract.

Throughout this framework the role responsible officer/medical director is referred to. The term responsible officer and associated duties relate only to primary care medical performers. The NHS England responsible officer(s) will have overall responsibility for responding to concerns through the statutory duties laid out in the Medical Profession (Responsible Officers) Regulations 2010 and the Medical Profession (Responsible Officers) (Amendment) 2013 but may delegate elements of these duties throughout NHS England to appropriate members of the responding to concerns team.

#### Revalidation/appraisal

Revalidation is the process by which doctors demonstrate to the GMC that they are up to date and fit to practise. The cornerstone of the revalidation process is that doctors will participate in annual medical appraisal. On the basis of this and other information available to the responsible officer from local clinical governance systems, the responsible officer will make a recommendation to the GMC, normally every five years, about a doctor's fitness to practise. The GMC will consider the responsible officer's recommendation and decide whether to renew the doctor's licence to practise.

#### Responsible officer regulations

This framework forms part of the responsible officer functions as set out in the Medical Profession (Responsible Officers) Regulations 2010 and the Medical

Profession (Responsible Officer) (Amendment) Regulations 2013. The principles above are also principles of the responsible officer role which will seek to:

- Ensure that doctors who provide and oversee care continue to be safe;
- ensure that doctors are properly supported and managed in sustaining and, where necessary, raising their professional standards;
- for the very small minority of doctors who fall short of the high professional standards expected, ensure that there are fair and effective local systems to identify them and ensure appropriate remedial, performance or regulatory action to safeguard patients; and
- increase public and professional confidence in the regulation of doctors.

The Medical Profession (Responsible Officers) Regulations 2010 and the Medical Profession (Responsible Officers) (Amendment) 2013 require each body designated under the regulations to appoint a responsible officer who must monitor and evaluate the fitness to practise of doctors. In particular this gives a responsible officer specific statutory duties relating to the identification, investigation and handling of concerns, monitoring of performance and conduct and in particular ensuring conditions or undertakings are in place, and addressing the concerns through the offering of appropriate support. The decision relating to the fitness to practise remains with the regulator, the GMC but is informed by the recommendation and information provided by the responsible officer.

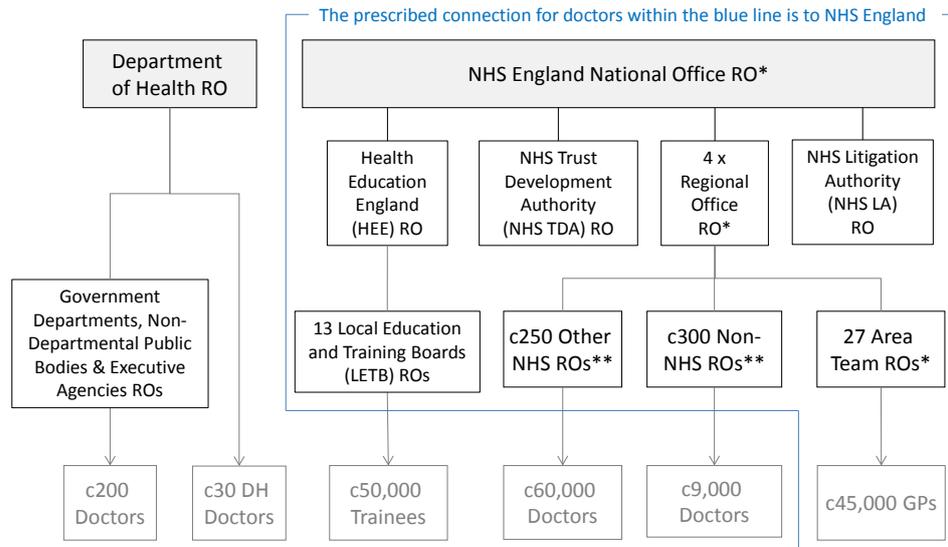
## **NHS England as designated body**

NHS England is the largest designated body under the Responsible Officers Regulations. It has a prescribed connection to approximately 45,000 primary care medical performers as well as a number of responsible officers, employed doctors and a small number of secondary care locum doctors. The means by which a doctor may have a prescribed connection to NHS England are described in detail in the NHS England published document '[Prescribed Connections to NHS England](#)<sup>1</sup>', and illustrated in Figure 1.

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<sup>1</sup> <http://www.england.nhs.uk/ourwork/qual-clin-lead/revalidation/>

**Figure 1.**

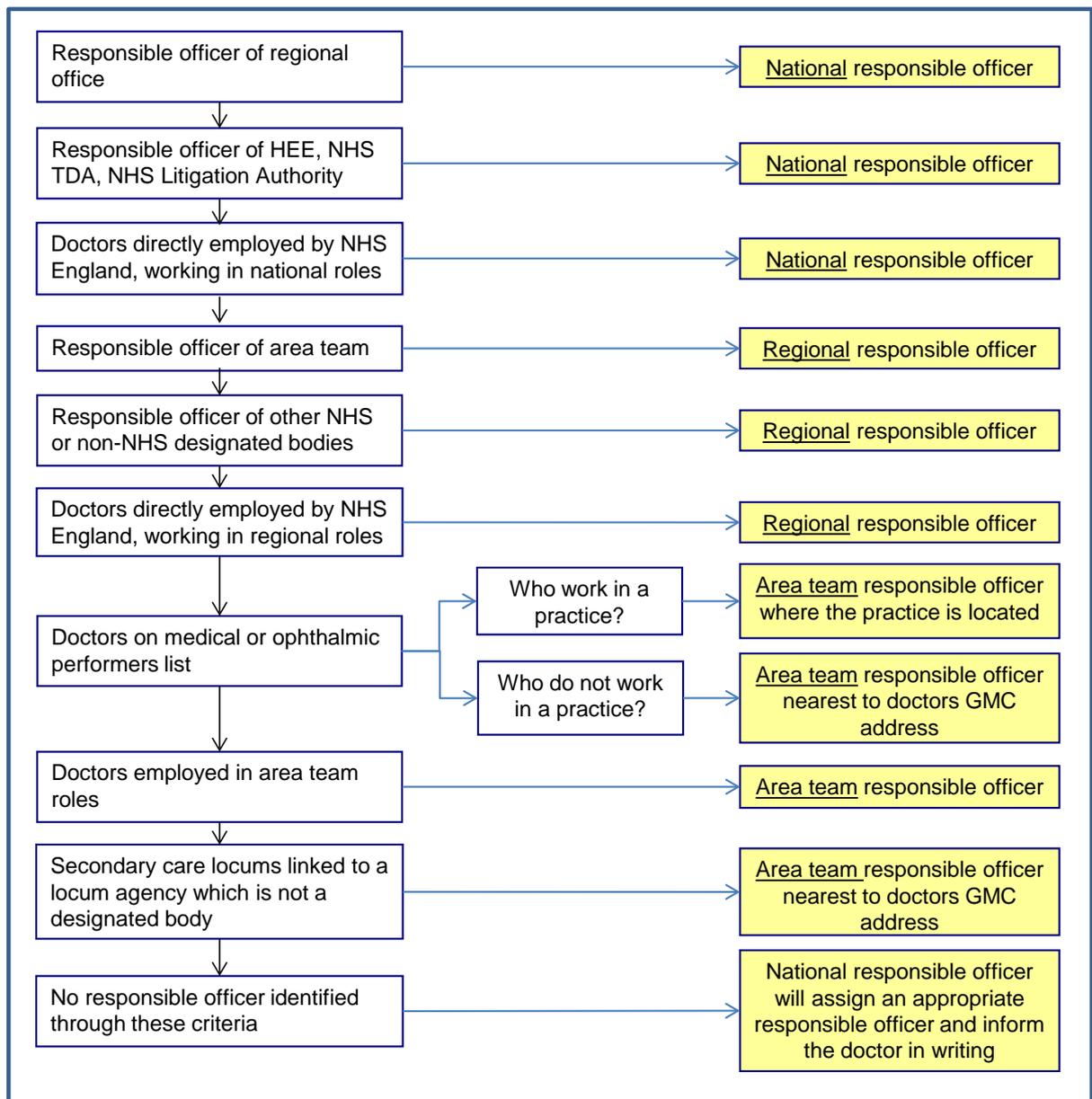


\* Denotes NHS England Responsible Officers (ROs)

\*\* Responsible officer of other NHS or non-NHS designated bodies including ROs from medical defence organisations, RMO organisations, British College of Aesthetic Medicine, NHS Blood & Transplant, Faculty of Homeopathy, Pathology Delivery Board, Defence Deanery, National Deanery for Pharmaceutical Medicine, NHS Leadership Academy, non-NHS organisations and armed forces (on the basis of the address of the Designated Bodies' headquarters)

The rules for establishing which NHS England responsible officer a doctor relates to are illustrated in Figure 2.

**Figure 2.**



Responsible officers have a specific responsibility relating to the duty to initiate measures to address concerns which may include requiring the performer to undertake re-skilling, re-training and/or rehabilitation services. There is no requirement on the designated body to fund this remediation however NHS England recognises that in exceptional circumstances it may be appropriate to do so.

## Remediation

Remediation is based upon the following non-negotiable principles arising from the professional, regulatory, contractual and legal obligations;

- i. the responsibility of the individual doctor, flowing from professional and regulatory requirements, to keep themselves up to date and fit to practise;

- ii. the responsibility of the NHS provider to meet the quality and continuity aspects of their contract; and
- iii. the responsibility of the responsible officer (in England) to fulfil their legal requirements around investigation, training and work experience where there are concerns about a doctor.

Should the remediation process require a doctor to be placed away from their place of work, the impact on smaller organisations could be significant. Work is therefore underway to agree a case for making transitional funding / loans, to support alignment to the above three principles whilst mitigating organisational risk. **Until this work is completed, costs should be agreed locally on a case by case basis and linked to the local business needs.**

Funding for individual practitioners should be exceptional and based on agreed clinical and service need. The following issues could be considered by area teams in considering suitability for funding. These are suggestions only and should not be considered as formal guidance at this stage until formal policy has been agreed:

- the practitioner should produce a business case detailing the financial impact on them and on service delivery to explain why the costs of the remedial package cannot be contained within their business or individually without impacting on patient care;
- the remedial package should be supported by an educational action plan with measurable outcomes, including timescales and addressing all areas of concern;
- the performance of the practitioner is likely to improve to an acceptable standard i.e. as part of the formal assessment process, and a clear decision has been made that there is capacity to benefit from a planned remediation package;
- a signed learning agreement must be in place; and
- occupational health assessments would be supported but health care should be provided through NHS commissioned routes.

As a guiding principle and based on historical practice and the consensus of current practice in area teams, where financial support is provided, split funding arrangements between the area team and the individual are the norm.

It is therefore suggested based on this historical practice that areas teams may pay up to 50% of costs up to maximum of £10,000, but that the individual practitioner should pay the first 50% and the total should include all on costs. Salaries, income or drawings will not be paid. Funding would apply to costs arising from conditions or outcome of formal assessment.

In this context, formal assessment is defined as: A formal, structured and methodologically sound process conducted to assess performance across a

practitioner's scope of practice, taking into account the concerns raised in order to identify development needs.

## **GP Induction and Refresher / Returner Schemes (I+R Schemes)**

These schemes provide the opportunity for qualified GPs to return to general practice after time away e.g. following a career break or time spent working outside of UK general practice. There is no requirement in legislation for a GP to undergo a period of induction or refresher / returner training, however, a period of induction and adaptation would be recommended for doctors returning to UK practice and for all EU and international medical graduate doctors.

Across the UK I+R schemes operate to meet local workforce needs based on:

- An assessment of the GP's learning needs on entry to the scheme
- Up to 6 months whole time equivalent supervised clinical practice in a GP training practice with a GP trainer
- Maintaining an appropriate level of workplace based assessments and a learning log
- A further review at the end of the placement to assess on-going learning needs.

## **English language testing**

Where applicants do not have a certificate of graduation or postgraduate training from the past two years which was taught and examined in English they will have to provide evidence in their initial application of:

- a pass at level 7.5 of the IELTS exam (or equivalent as set by the regulator); and
- three months professional employment from the past two years in a country where English is the first language and current English language capabilities necessary for the work which those included in the list could reasonably be expected to perform. This should be in the form of references submitted with the application form that attest to the performer's knowledge of English.

Alternatively, performers can agree to have a face to face interview with a member of NHS England staff, appointed by the responsible officer or medical director who is deemed competent to assess the applicant's standard of oral English and practical application in a clinical context.

If the applicant chooses to submit to oral language testing, the cost of this will need to be met by the applicant.

## Occupational health

All applicants to the medical performers list are required to undertake occupational health assessment to provide them with clearance to work within the NHS. The occupational health clearance declaration certificate for medical performers should state whether performers have clearance to undertake exposure prone procedures (EPP), which they may perform in the course of their duties. If applicants are not cleared for EPP this does not in itself prevent them joining the performers lists as the PLDP may agree to include a performer with conditions.

## Safeguarding children

Applicants to the medical performers list are required to provide evidence of child protection training at level 3, as a minimum. Information about the level of child protection training that is needed for different roles, and how often doctors should receive that training, is provided in *Safeguarding children and young people: roles and competences for health care staff*, published by the Royal College of Paediatrics and Child Health.

## **Annex 6 - Elements of the framework specifically applicable to dental performers**

### **Introduction**

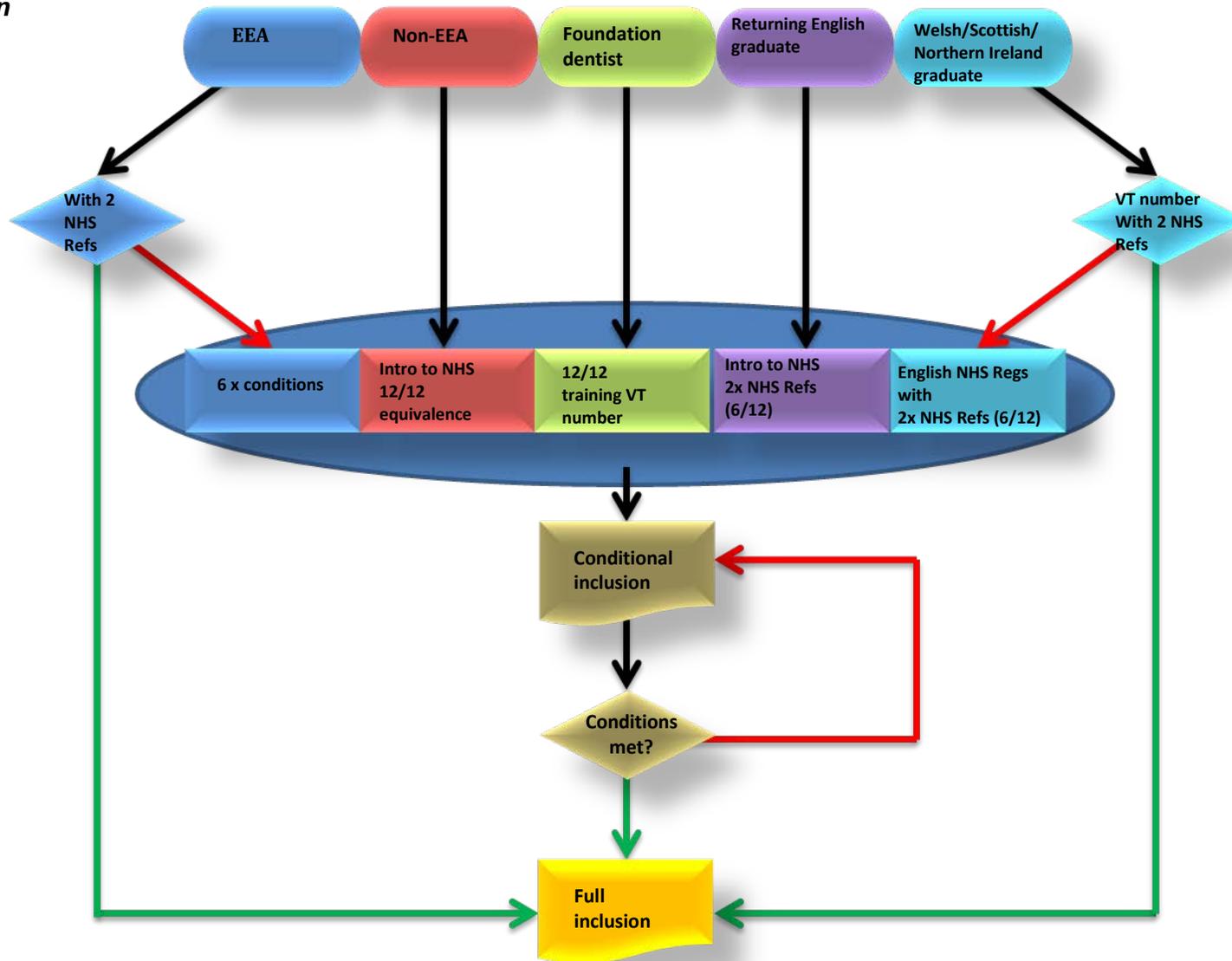
This annex provides area team and primary care support services staff who process applications and those who admit (or otherwise) applicants to the list with information pertinent to dental performers list that is not included in the framework.

### **Terminology**

The NHS contracts with general dentists to provide NHS primary care dental services. These contractors are more commonly known as providers. Providers may employ or engage other general dentists to deliver services to patients. These dentists are known as performers. Providers may also be performers and deliver services to patients.

Providers are ultimately responsible for all services delivered under the contract they hold with the NHS, whether they deliver the services themselves or they employ or engage other professionals to deliver services under their contract.

**Returns/  
Induction**



## Returners, European Economic Area (EEA) applicants

If the applicant cannot demonstrate that they have worked within primary care NHS dentistry or have been absent from practice for the past two years they must demonstrate that they are competent to practice professionally and clinically and that they can show adequate communication, leadership and managerial skills to allow them to treat patients safely

All applicants are required to show that they know and understand the NHS health care system which they will be working in and the standards expected of them.

All returners to UK practice and EEA applicants will be required to complete the NHS England clinical checklist for review by the medical director auditing their skills and competence and the following conditional inclusions may apply requiring the applicant to:

1. Participate and produce evidence of completion of an 'Introduction to the NHS course' or equivalent course offered or accredited by a dental deanery within three – six months on an agreed case by case basis.
2. Produce two acceptable NHS competency based references from appropriate clinicians in the current practice after three months.
3. Submit a continuing professional development (CPD) plan within three months which addresses the clinical training needs identified by the medical director on their review of the completed clinical checklist referred to above. Restrictions may be placed upon the applicant to preclude them from performing procedures in which they are deemed not to have sufficient skill. However once able to demonstrate attainment of a satisfactory level of competence in the procedure, the medical director will lift the relevant restriction. All performers are required to commit to a five year cycle of continuing professional development under the terms and conditions of registration with the regulatory body. Requirement for clinical training in respect of admission to the performers list may form part of the five year CPD commitment required by the regulatory body. The CPD plan should include training in respect of information governance to ensure a satisfactory understanding of NHS England's standards to be compliant
4. Completion of a satisfactory record keeping audit (as currently in use) to be carried out by NHS England for five recently completed band 2 or 3 cases for adults and two recently completed band 2 or 3 cases for adolescent children) after three months in practice.
5. Production of a clinical audit and patient satisfaction survey (with results and recommendations implemented) after a period of six months in practice.
6. Production of a portfolio of work to evidence the applicant is performing satisfactorily in accordance with the standards set out in the competency framework within six months

## **Non EEA applicants and EEA applicants who have not studied in the EEA**

All non EEA applicants must also demonstrate that they comply with the same standards as stated above are required for returners and EEA applicants<sup>2</sup>. If the applicant cannot demonstrate that they have worked within primary care NHS dentistry and have knowledge and understanding as stated above, the following conditional inclusions will apply:

1. Participate and produce evidence of completion of an 'Introduction to the NHS course' offered or accredited by a dental deanery.
2. Participate and satisfactorily complete an equivalence scheme. This process is usually for a 12 month duration. It requires the practice to be inspected by Health Education England and the agreement of a suitable dentist in the practice to be the applicant's mentor for the equivalence period. The applicant following satisfactory completion of the equivalence period is issued with a foundation dentist certificate following which the applicant can apply to full inclusion on the dental performers list.

## **Foundation dentist applicant**

1. Upon completion of foundation training year 1, dentists must submit a copy of foundation dentist 1 certificate to the primary care support (PCS) office, processing the application.
2. The PCS office will then change the status to full inclusion.
3. Dentists are advised to stay on the performers list even if they are going to work in secondary care for 12 months, as can then do locum work in primary care.

## **Returning UK graduate of a university in England or from a university in Wales, Scotland or Northern Ireland with two references from NHS primary care dental practice in England who have been absent for over four years from high street practice or NHS dental service**

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<sup>2</sup> EEA Nationals with third country qualifications are able to get those qualifications recognised under the MRPQ if they have undertaken 3 years practical experience in an EEA State. These cases should be treated the same as EEA nationals with EEA qualifications.

These applicants should be referred for an assessment of their CPD requirements and possible recommendation for induction and returners' scheme depending on the outcome of assessment. All costs associated with the assessment under the returners/induction programme are to be met by the applicant. Performers may be required to work under supervision for a period deemed appropriate by the deanery and in addition are required to:

1. Participate and produce evidence of completion of an 'Introduction to the NHS course' or equivalent course if the applicant lacks knowledge of the system in which they will be working
2. Provide evidence that they are compliant with GDC mandatory CPD.

**Returning UK graduates of a university in Wales, Scotland or Northern Ireland and who do not have two references from NHS primary care dental practice in England and who have been absent for over four years from high street practice or NHS dental service.**

These applicants must also demonstrate they are competent to practice professionally and clinically, and show adequate communication, leadership and managerial skills to allow them to treat patients safely and so are required to:

1. Participate and produce evidence of completion of an 'Introduction to the NHS course' or equivalent course
2. After three - six months to be agreed on a case by case basis produce two acceptable NHS competency based references from clinicians in the current practice, where possible.
3. Provide evidence that they are compliant with GDC mandatory CPD.

**Where applicants are unable to provide an address from which they will be working**

Applicants must provide evidence that they have been working within the area team locality within three months of conditional inclusion to the list.

**References**

Clinical references must be submitted with the application using NHS England's standard reference template.

Two references should be provided by appropriate clinicians, referring to recent work history and confirming that they have known the applicant in a professional capacity for a period of three months or if references do not relate to recent posts or for periods of three months an explanation of why this is not possible.

In exceptional circumstances, an applicant may be unable to provide two recent clinical references. If at least one reference is acceptable then conditional inclusion occurs and the applicant must provide two acceptable, clinical references from appropriate clinicians after completing three months in the new practice.

## **Revalidation/appraisal**

In the absence of a formal revalidation/appraisal process, all performers must ensure that they are up to date with their skills and training in line with General Dental Council requirements and take part in their practice appraisal scheme.

## **Dental suspensions**

When undertaking the action of suspension in respect of a dentist, this must be carried out in line with the Statutory Determination NHS England The Performers Lists (Suspended Dentists' NHS Earnings) Determination 2013 which can be found at:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/259499/determination\\_payment\\_to\\_suspended\\_dentists.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/259499/determination_payment_to_suspended_dentists.pdf)

## **English language testing**

Applicants who do not have a certificate of graduation or postgraduate training from the past two years which was taught and examined in English will have to provide evidence of:

- a pass at level 7.5 of the IELTS exam (or equivalent as set by the regulator); and
- three months professional employment from the past two years in a country where English is the first language and current English language capabilities necessary for the work which those included in the list could reasonably be expected to perform. This should be in the form of references submitted with the application form that attest to the performer's knowledge of English. Alternatively, performers can agree to have a face to face interview with a member of NHS England staff, appointed by the responsible officer (RO) or medical director who is deemed competent to assess the applicant's standard of oral English and practical application in a clinical context.

If the applicant chooses to submit to oral language testing, the cost of this will need to be met by the applicant.

## **Occupational health**

All applicants to the dental performers list are required to undertake occupational health assessment to provide them with clearance to work within the NHS. General Dental Practitioner applicants will need 'additional health clearance' to the standard required for performance of Exposure Prone Procedures because these form part of their everyday work.

## **Safeguarding Children**

Applicants to the dental performers lists are required to provide evidence of child protection training at level 2 as a minimum and encouraged to attain level 3 if they have not already done so.

## **Annex 7: Elements of the framework specifically applicable to ophthalmic performers**

### **Introduction**

This annex provides area team and primary care support services staff who process applications and those who admit (or otherwise) applicants to the list, with information pertinent to the ophthalmic performers list that is not included in the framework.

### **Terminology**

For the purposes of consistency, the terminology used to describe those on the ophthalmic performers list will be providers and performers.

The NHS contracts with optometrists to provide primary care general ophthalmic services and they are known as providers.

Providers may employ or engage other optometrists to deliver services to patients and these optometrists are known as performers. Providers may also be performers and deliver services to patients.

Providers are ultimately responsible for all services delivered under the contract they hold with the NHS, whether they deliver the services themselves or they employ other professionals to deliver services under their contract.

### **Notifications to the General Optical Council under the National Health Service (Performers Lists) (England)**

#### **Regulations 2013**

Under the National Health Service (Performers Lists) (England) Regulations 2013, performers are obliged to notify NHS England of investigations by their regulatory body and to provide all documents related to the investigation within seven days. The regulatory body for optometrists is the General Optical Council (GOC). In contrast to the General Medical Council (GMC) and the General Dental Council (GDC), the GOC investigates all complaints irrespective of merit and has no screen out function.

If the GOC is investigating a complaint area teams should not investigate in tandem. If a complaint raises a matter that is potentially serious, giving rise to immediate and urgent concerns about patient safety, an interim order application by the GOC can be made to suspend or place restrictions on the registrants practice whilst the matter is investigated. Consequently NHS England can be assured that any practitioner on their lists being investigated by the GOC is being properly regulated, is safe to practise and they need not intervene.

## **Accessing patient records – the General Ophthalmic Services Contracts Regulations 2008, Regulation 14**

This regulation sets out the requirement of a contractor to allow NHS England to access data in relation to GOS claims and in relation to the patient records. The reason for this regulation is to allow probity checks on the claims made by NHS contractors and in order to undertake this work, records of patients supplied with GOS services need to be accessed.

Access means that members of NHS England staff are allowed to go into the practice (subject to the usual notice being given as per the regulations), to review the original documents and to take copies of those documents but not to remove and withhold those original records.

It would be appropriate to make an arrangement with the individual contractor to remove the originals to photocopy and to return the original records within a short time frame; within two to five working days – the exact time scale to be agreed with the individual contractor. It is vital for the ongoing patient care for a contractor to have the original records.

## **Newly qualified optometrists – ability to join the performers list and definition of ‘intention to work’**

Optometrists are permitted to apply for inclusion to the NHS ophthalmic performers list up to a maximum of three months prior to the expected date of successful completion of their pre-registration year. Many practitioners await completion of their exams before applying. This means that though qualified and legally permitted to carry out private eye examinations, they may not perform NHS sight tests until included on the performers list.

Applicants should not be refused entry onto the performers list due to their not having secured a job offer, as a job offer would be reliant on the applicant having a performers list number and therefore cannot secure a job offer until they are included on the performers list. Applicants should be able to demonstrate a significant intention to work in the NHS.

## **National Clinical Assessment Service (NCAS)**

It should be noted that NCAS do not currently provide advice and support to optometrists.

## English language testing

Applicants who do not have a certificate of graduation or postgraduate training from the past two years which was taught and examined in English will have to provide evidence of:

- a pass at level 7.5 of the IELTS exam (or equivalent as set by the regulator); and
- three months professional employment from the past two years in a country where English is the first language and current English language capabilities necessary for the work which those included in the list could reasonably be expected to perform. This should be in the form of references submitted with the application form that attest to the performer's knowledge of English. Alternatively, performers can agree to have a face to face interview with a member of NHS England staff, appointed by the responsible officer (RO) or medical director who is deemed competent to assess the applicant's standard of oral English and practical application in a clinical context.

If the applicant chooses to submit to oral language testing, the cost of this will need to be met by the applicant.

## Occupational health

Occupational Health assessment and clearance is not ordinarily required for applicants to the ophthalmic performers list as the clearance is not proportionate to the amount of NHS work that ophthalmic practitioners undertake. However, an assessment may be appropriate if an extended level of care is commissioned.

## Safeguarding children

Applicants to the ophthalmic performers list are required to provide evidence of child protection training at level 2 as a minimum and should be encouraged to attain level 3 if they have not already done so.